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FIRST SUPPLEMENT TO
AGREEMENT BETWEEN THE
SAN LUIS REY MUNICIPAL WATER DISTRICT;
DOROTHY E. LEAVEY AND J.T. AND K.L. MCCARTHY;
EDGAR E. AND ELIZABETH S. PANKEY TRUST;
PANKEY FARMS; PANKEY RANCH;
BLANCHE POPE, TRUSTEE U/D/T POPE FAMILY TRUST;
NORTH SAN DIEGO COUNTY DEVELOPMENT CO.; AND
GREGORY CANYON, LTD.

THIS FIRST SUPPLEMENT (“First Supplement”) is made effective June __, 2004 by and between the San Luis Rey Municipal Water District (“SLRMWD”), a special district organized under the Municipal Water District Act of 1911, and Gregory Canyon Ltd., a California Limited Liability Company (“Gregory Canyon”), and supplements that instrument recorded on May 8, 1996, entitled “Agreement between the San Luis Rey Municipal Water District; Dorothy E. Leavey and J.T. and K.L. McCarthy; Edgar E. and Elizabeth S. Pankey Trust; Pankey Farms; Pankey Ranch; Blanche Pope, Trustee U/D/T Pope Family Trust; North San Diego County Development Co.; and Gregory Canyon, Ltd.” (“1996 Agreement”).

SLRMWD and Gregory Canyon are sometimes referred to herein individually as a “Party” and collectively as “Parties”.

RECITALS

- A. The Parties, among others, entered into the 1996 Agreement for the purpose of setting forth measures that would be taken by Gregory Canyon, its predecessors-in-interest and its successors to protect groundwater resources within the boundaries of the SLRMWD.
- B. Gregory Canyon has acquired all rights in the Gregory Canyon real property from North San Diego Development Company, a signatory to the 1996 Agreement, and is its successor in interest.
- C. The San Diego County Local Enforcement Agency (“LEA”) of the Department of Environmental Health, acting as the Lead Agency under the California Environmental Quality Act (Public Resources Code sections 21000, et seq. (“CEQA”)), prepared a draft environmental impact report (“EIR”) for an approximately 300-acre landfill (including the waste disposal area and borrow/stockpile areas) to be placed on approximately 1,770 acres of land owned by Gregory Canyon (the “Project” or “Project Site”). The Project

Site is located in the unincorporated area of North San Diego County, described with particularity in Proposition C adopted by the voters of San Diego County in a County wide election in November 1994. A portion of the Project Site is located within the jurisdictional boundaries of the SLRMWD.

- D. By letter dated April 28, 1999 to the LEA, the SLRMWD requested that certain of the measures contained in the 1996 Agreement be incorporated in the EIR and the Mitigation Monitoring and Reporting Program (“MMRP”) for the Project.
- E. The LEA incorporated certain measures referenced in the April 29, 1999 letter in the Final EIR for the Project. The LEA certified the Final EIR for the Project on February 6, 2003.
- F. SLRMWD contends that the Final EIR, specifically Table 10-1 of the MMRP, identifies the SLRMWD as a CEQA “Responsible Party” charged with monitoring compliance with Project mitigation measures MM 4.3-1a through MM 4.3-1j.
- G. Following the LEA’s certification of the Final EIR, the SLRMWD requested the LEA to require that Gregory Canyon provide funding to make it feasible for the SLRMWD to carry out the responsibilities assigned to it in the Final EIR, including monitoring the mitigation measures delegated to it by the LEA in MM 4.3-1a through MM 4.3-1j, as well as to implement other measures designed to protect groundwater resources. The SLRMWD has also asked the LEA to consult with it, and with the California Regional Water Quality Control Board, San Diego Region (“RWQCB”) to develop appropriate protocols to assist the SLRMWD in carrying out its CEQA responsibilities and to monitor compliance with these Project mitigations. In carrying out these activities, SLRMWD believes that it is a Responsible Agency as defined in CEQA. Gregory Canyon takes no position on that issue.
- H. The SLRMWD on June 16, 2004, at a regularly scheduled and agendized meeting of the Board of Directors, acting as a CEQA Responsible Agency, by a 4-0 vote (with one absence) declined to approve the Final EIR for the landfill project on the grounds that it was inadequate as a matter of law, that the project would result in significant unmitigated water quality impacts for which no Statement of Overriding Considerations was made, for which mitigation was infeasible to carry out, and that adverse environmental impacts would result because of the SLRMWD’s refusal to accept the responsibilities delegated to it by the LEA under the MMRP as written and approved by the LEA.

- I. Gregory Canyon hereby agrees to pay SLRMWD's costs of meeting its mitigation monitoring responsibilities as described in the Final EIR, to purchase a policy or policies of insurance acceptable to SLRMWD to address issues of environmental investigation, clean up and remediation, to pay the costs of construction quality assurance during construction of the landfill, as well as for other items, in accordance with the terms and conditions set forth herein and in terms and conditions to be developed and memorialized in future amendments, modifications and/or supplements to the 1996 Agreement.
- J. This First Supplement sets for the terms agreed to between the SLRMWD and Gregory Canyon as to the assistance Gregory Canyon will furnish to the SLRMWD to monitor the mitigation requirements set forth in the 1996 Agreement and MM 4.3-1a through MM 4.3-1j, as well as additional mitigation measures and other matters. By entering into this First Supplement, SLRMWD takes no position on the suitability of the project site for municipal landfill purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. Agreement Remains in Effect.
 - 1.1 All terms and conditions of the 1996 Agreement remain in effect, as supplemented by this First Supplement.
2. Feasibility of Mitigation Measures.
 - 2.1 Upon agreement by Gregory Canyon to fully fund performance of the SLRMWD's duties under the Final EIR, including monitoring compliance with Mitigation Measures MM 4.3-1a through MM 4.3-1j, the SLRMWD acting as a CEQA Responsible Agency will reconsider the matter of its approval of the Final EIR at a specially scheduled meeting of its Board of Directors on June 30, 2004, at 1:30 p.m. at its offices in Fallbrook.

3. Periodic Review.

3.1 The Parties recognize the importance of periodic review and amendment, modification and/or supplement of the 1996 Agreement throughout the life of the landfill and during its closure and post-closure period. The Parties recognize and agree that on certain matters, they will work in good faith to reach agreement on matters which are too premature to agree on in required detail at this time. The Parties agree to meet annually or more frequently to discuss performance under the 1996 Agreement, the First Supplement, and any future amendments, modifications and/or supplements; any accounting matters; payment or billing issues; and performance protocols, and to coordinate with each other and the regulatory agencies. In the event no agreement can be reached regarding disputes between the SLRMWD and Gregory Canyon as to Gregory Canyon's compliance with Joint Technical Document ("JTD") requirements and Waste Discharge Requirements ("WDRs") and the SLRMWD's duties under the Final EIR, the Parties agree that the SLRMWD may seek to enforce the provisions of the JTD and WDRs as they affect water quality in the appropriate California court to the full extent provided under applicable law. SLRMWD has standing to enforce the JTD and WDRs in the appropriate California court to the full extent provided under applicable law.

4. Payment by Gregory Canyon of the SLRMWD's Mitigation Monitoring Expenses.

4.1. Gregory Canyon agrees to pay the SLRMWD's reasonable costs for consultants, engineers and attorneys engaged by the SLRMWD to assist it in evaluating and performing its CEQA mitigation monitoring requirements, and advising the District on insurance matters arising from the purchase of insurance consistent with this First Supplement. Such costs include the preparation of this First Supplement, attorneys' costs incurred in relation to the procurement of insurance, and coordination with regulatory agencies to develop protocols to monitor compliance with project mitigation measures MM 4.3-1a through MM 4.3-1j.

4.2 Gregory Canyon will deposit with the SLRMWD the initial sum of \$75,000 on July 15, 2004, against which estimated attorneys' and experts' fees incurred in developing this First Supplement will be billed. Should actual fees and costs exceed the amount deposited, SLRMWD will bill the reasonable costs to Gregory Canyon for payment, which Gregory Canyon agrees to pay. If the deposit

exceeds actual costs the surplus will be refunded to Gregory Canyon. On August 1, 2004, and annually thereafter until post-closure actions have been completed, Gregory Canyon will deposit a sum expected to cover SLRMWD's reasonable costs for the remainder of the year plus a reserve of \$25,000 out of which technical consultants' fees, attorneys' fees and costs incurred in carrying out mitigation responsibilities for the year, will be paid. Such deposit due August 1, 2004 will be in the initial sum of \$45,000 per year, including \$20,000 for the first year of monitoring and development of protocols, and \$25,000 reserve. Funds remaining as of August 1, 2005 will be carried over. In the event reasonable costs incurred exceed funds on deposit and reserved, Gregory Canyon agrees to pay such reasonable costs and fees. A copy of the project mitigation measures is attached hereto as Exhibit A.

- 4.3 At the end of the first year in which waste is accepted for disposal at the Gregory Canyon Landfill, the Parties will commence negotiations about Gregory Canyon's payment of monitoring costs of the SLRMWD during the landfill's closure and post-closure period, as provided for in Section 4.2.
- 4.4 Disputes, if any, which arise concerning reasonableness of costs incurred by the SLRMWD are not subject to resolution by the binding arbitration provisions of Section 10 of the 1996 Agreement. The Parties agree that any dispute will be resolved through informal mediation, and if unresolved after passage of a reasonable time, in the California court system judicially. The SLRMWD agrees to make available for inspection by Gregory Canyon statements from technical consultants for professional services, and will provide summaries or redacted versions of statements for professional services submitted by its attorneys. In making such statements and summaries available for Gregory Canyon's review, the SLRMWD does not waive the attorney-client privilege, the attorney work product doctrine or any provision of law protecting the confidentiality of its communications with its attorneys and/or other consultants or their work product. The SLRMWD will require documentation from its attorneys and consultants prior to payment.
- 4.5 The SLRMWD will furnish documentation to Gregory Canyon by the fifteenth (15th) day following the end of each calendar quarter for expenses incurred during the previous calendar quarter. Funds deposited which have not been spent or which have not been earmarked for incurred expenses will be carried forward to

the next year. SLRMWD may keep a reserve of up to \$25,000. Unspent funds in excess of \$25,000 will be refunded.

5. Funding of Construction Quality Contractor.

5.1 The Parties have agreed that Gregory Canyon will pay the costs of engagement of a Construction Quality Contractor (“CQC”) who will perform as provided for in 27 California Code of Regulations (“CCR”) 20323 and 27 CCR 20324.

5.1.1 Prior to initiating construction, Gregory Canyon shall enter into a binding agreement with the RWQCB to provide funding to allow the RWQCB to engage the CQC to undertake Construction Quality Assurance (“CQA”) consistent with 27 CCR 20323 and 27 CCR 20324. In addition to the requirements of 27 CCR 20324, the design professional preparing the CQA shall have at least five years experience as a registered civil engineer or certified engineering geologist working on landfills in California. The firm selected will be required to procure a policy of insurance, the terms and amounts of which must be acceptable to the SLRMWD.

5.1.2 CQA activities will be undertaken in accordance with procedures set forth in 27 CCR 20323 and 27 CCR 20324, including the JTD prepared by Gregory Canyon and submitted to and approved by the LEA and the RWQCB, as it may be amended from time to time. The CQC will report to the RWQCB.

5.1.3 In the event the RWQCB is unable to accept funding for the CQC or is otherwise unable to retain the CQC, the Parties agree to negotiate in good faith to identify another agency that may engage the CQC to perform the activities contemplated by this First Supplement.

5.1.4 Copies of reports, notes of field observations, testing results and all other documents prepared by the CQC will be provided to both the SLRMWD and Gregory Canyon when submitted by the CQC to RWQCB, at no cost to the SLRMWD.

5.1.5 Gregory Canyon may engage its own contractor to provide CQA services, or may rely on the CQC engaged by RWQCB in meeting CQA requirements in applicable law, regulations or permits.

6. Groundwater Sampling and Analysis.

6.1 Maintaining water quality of the San Luis Rey River and its basins for the beneficial use of water users in the SLRMWD is a priority of both Parties. The Parties acknowledge that the RWQCB has designated the water within the SLRMWD to have the beneficial use for drinking water purposes. The Parties recognize that the groundwater monitoring system to be included in the WDRs and/or JTD will address background monitoring, detection monitoring, and surface water monitoring. Starting upon issuance of the WDRs, and completing not less than one hundred twenty (120) days prior to commencing the receipt of waste at the landfill, the Parties shall develop a protocol for the sampling, handling and analysis of groundwater samples to be collected from monitoring wells at the landfill (and other wells to be monitored), as required by the WDRs and/or JTD. The Parties agree that the protocol will be consistent with applicable federal and state law and regulations governing solid waste landfills, including but not limited to the requirements of 27 CCR 20415. The protocol will include a determination of the constituents to be analyzed, and a method for adjusting the constituents to be analyzed based on future monitoring of leachate collected from Gregory Canyon's leachate collection and removal system. The LEA and the RWQCB will be consulted in the development of the protocol. In the event of disagreement regarding any provisions of the protocol, the determination of the RWQCB will be controlling.

6.2 Within fifteen (15) days from the date of final completion of the protocol, the SLRMWD will select one or more State Certified contractors to provide sampling, handling and laboratory analytical services at a State Certified laboratory with respect to groundwater samples collected in accordance with the requirements of the WDRs and/or JTD. Gregory Canyon agrees to promptly enter into arrangements for payment of the selected contractor or contractors for providing these services without interruption until completion of post-closure activities. The contractor(s) will be selected in consultation with the LEA and the RWQCB, and any contractor providing laboratory analytical services must be State-certified.

- 6.3 The SLRMWD may, in its reasonable judgment, select new contractor(s) referred to in Section 6.2 to substitute for any of the contractor(s) initially selected, and upon such occurrence Gregory Canyon agrees to promptly make arrangements for the payment of such new contractor(s). However, any selection of new substitute contractor(s) that occurs following initiation of an Evaluation Monitoring Program conducted pursuant to 27 CCR 20385(a)(2) or (3) will not become effective until the completion of the Evaluation Monitoring Program.

7. Water Service by the SLRMWD.

- 7.1 Gregory Canyon agrees to purchase water and water service from the SLRMWD (if available) for use in a service area to be determined by Gregory Canyon in quantities and at pressures, adequate for construction and operation as set forth in the EIR, subject to the approval (if required) of the San Diego County Local Agency Formation Commission (“LAFCO”). The terms and conditions of service are to be negotiated and set forth in a service agreement to be finalized among the Parties in sufficient time to furnish service of initial construction water. Gregory Canyon agrees to pay all costs of the SLRMWD’s furnishing of water service. Gregory Canyon agrees to notify the SLRMWD on or before October 1, 2004, of its construction and project build out plans to allow the SLRMWD to commence arrangements for service, at which time a Readiness to Serve Fee will be levied by SLRMWD. The SLRMWD will arrange to undertake all required studies, including environmental and engineering studies, at Gregory Canyon’s expense, to initiate service.
- 7.2 Subject to water availability and approval of LAFCO (if required) the SLRMWD will provide both potable and non-potable water to those portions of the Project site as designated by Gregory Canyon in such quantities and at such pressures as requested by Gregory Canyon, which water is to be made available during construction and throughout its operation, and during closure, and post-closure period as appropriate.
- 7.3 Gregory Canyon will support any proceedings involving the SLRMWD before LAFCO, if asked to do so by the SLRMWD, including but not limited to, changes of the boundaries of SLRMWD’s service area to include the entire Gregory Canyon ownership.

- 7.4 Gregory Canyon will support and not oppose the imposition of the SLRMWD's annual water availability charge on lands within the boundaries of the SLRMWD.
- 7.5 Gregory Canyon will support formation of an improvement district within the SLRMWD, if requested, consistent with the provisions of California Water Code sections 71000 et seq., and other laws to which the SLRMWD is subject, which formation will be in the sole determination of the SLRMWD, for the purpose of providing water service to those portions of the Project site within the SLRMWD for which the operator requires water service .
8. Water Rights.
- 8.1 Gregory Canyon will convey to the SLRMWD any and all water rights it holds, whether or not currently exercised, in a form satisfactory to the SLRMWD, the election of which will be at the SLRMWD's sole discretion. The conveyed water rights will be used by the SLRMWD to furnish water within SLRMWD's service area at locations designated by Gregory Canyon, to Gregory Canyon and for other beneficial uses, including but not limited to, fire flow. Gregory Canyon will use its best efforts to preserve and defend its claimed water rights, and not lose them through non-use, prescription, or lapse of administrative proceedings.
- 8.2 Gregory Canyon will resume processing its Application to Appropriate Water No. A30038 now pending before the State Water Resources Control Board, to affirm the property's historic water supply, and to allow appropriation of water to lands not riparian to the San Luis Rey River.
- 8.3 Any water reasonably surplus to the needs of Gregory Canyon will be transferred in a form satisfactory to the SLRMWD, for beneficial use.
- 8.4 Gregory Canyon will furnish the SLRMWD historic records of pumping at the landfill property, including volume, place of use, point of diversion, type of pump, power records, water facility construction, repair and maintenance records, prior filings, if any, with the State Water Resources Control Board, and records of proceedings regarding Application to Appropriate No. A30038, to the extent available. These records should be furnished as soon as possible, so that the SLRMWD can study water supply options for the Gregory Canyon Landfill.

9. Hold Harmless, Indemnification and Insurance.

- 9.1 Gregory Canyon agrees to defend (with counsel of Gregory Canyon's choice, subject to SLRMWD's approval), indemnify and hold the SLRMWD harmless in any claims, suits, proceedings, investigations, and judgments arising from or in connection with (a) the exercise of Gregory Canyon's water rights; (b) the furnishing of any water and/or water related services by SLRMWD to Gregory Canyon's property and operations; (c) the furnishing of water by SLRMWD to any other water user within SLRMWD; (d) the consumption or use of any water from the San Luis Rey River or its groundwater claimed to be contaminated; (e) the carrying out of SLRMWD's monitoring duties under CEQA (except to the extent of the negligence or willful misconduct of SLRMWD, its representatives, consultants, officers, agents, employees, and volunteers); and (f) the administration of this First Supplement.
- 9.2 The Parties further recognize that SLRMWD's service of water is regulated by state and federal law. In the event that a "Contaminant", as defined below, is detected (a) in a Gregory Canyon monitoring well; or (b) in a SLRMWD production well, and the RWQCB makes a finding that the Contaminant is traceable to the Project; or (c) in, on, or under any property under the jurisdiction of the SLRMWD from which water is pumped, and the RWQCB makes a finding that the Contaminant is traceable to the Project, Gregory Canyon shall be responsible for all liabilities, damages, claims and costs resulting therefrom, including but not limited to any liability Gregory Canyon may have under state and federal law and including, but not limited to, the following:
- (i) Costs of investigation and remediation of the soil, sediment, groundwater and surface water, and costs of natural resource damages and property damage to the extent required by applicable laws and the requirements of governmental authorities including costs of defense of any associated damage suit brought against, or judgment entered against the SLRMWD by any person regardless of merit or outcome;
 - (ii) Removal of the Contaminant from the drinking water to the extent required by applicable laws if the Contaminant is found in a production well, through well-head treatment or other treatment system acceptable to SLRMWD;

- (iii) Costs incurred by SLRMWD to require the clean up of unpermitted releases of Contaminants by Gregory Canyon associated with the operation and maintenance of treatment facilities until remediation is complete, pursuant to applicable laws and the requirements of governmental authorities;
- (iv) Costs, fines and penalties due to violations or alleged violations by Gregory Canyon of applicable laws relating to the environment or health and safety;
- (v) Costs of liabilities for alleged or actual personal injury, including costs of defense of any claim against, suit brought against, or judgment entered against the SLRMWD by any person arising from the ingestion of or exposure to water claimed to be contaminated by the Gregory Canyon Landfill; and
- (vi) Losses, liabilities, damages, costs (including but not limited to investigatory and response costs) and expenses (including but not limited to reasonable attorneys' and consultants' fees and any and all expenses whatsoever reasonably incurred in investigating, responding to, preparing, defending or settling any claim or action or in invoking or obtaining the benefits of insurance covering SLRMWD (including the insurance contemplated in this section 9), in respect of any loss against which SLRMWD would otherwise be indemnified hereunder.

“Contaminant” means any constituent which exceeds action levels for drinking water supplies established by state and/or federal law, including but not limited to, Title 22 of California Code of Regulations or any substance that gives rise to liability, imposes duties, or requires the incurrence of costs under any environmental health or health and safety law. The Parties agree to confer and cooperate with the RWQCB in the determination of required actions, as appropriate.

9.3 The Parties recognize that the San Luis Rey River and its groundwater basins are the sole source of supply to the water users in the SLRMWD, and that the geology and hydrology of the river and its basins allow for the storage of water, the conjunctive use of ground and surface water, and the carry over of water to meet the demands of customers through dry, and multiple dry year periods. In recognition of the importance of this natural resource, Gregory Canyon agrees to purchase and maintain for the duration of the operation, closure and post closure periods, policies of environmental insurance covering claims for injuries to persons or damage to property (including natural resources damage) and the release and remediation of contaminants into the environment, which may arise from or in connection with the design, construction, closure operation, expansion, modification and repair of the landfill by Gregory Canyon, its successors, its agents, representatives, employees, or assigns issued by acceptable insurance companies, as determined by the SLRMWD, which are (1) qualified to do the business of insurance in California, (2) maintain an agent for service of process within the State, and (3) are rated not less than "A VII" according to the latest Best's Key Rating Guide, covering the liabilities set forth in Sections 9.1 and 9.2, and all liabilities and claims related to the release of Contaminants resulting in any way from the operations of Gregory Canyon, claims for violations of health, safety or environmental laws, third party claims against the SLRMWD, tort claims, clean up and remediation claims and costs, trespass claims, nuisance claims, and claims for catastrophic acts, including acts of domestic and foreign terrorism. The insurance coverage shall cover the SLRMWD, its employees, directors, agents and volunteers.

- (a) The policy or policies and related endorsements are to be received and approved by the SLRMWD, in its reasonable discretion before the commencement of landfill construction. The policies of insurance are to contain or be endorsed to contain, without limitation, the following provisions and are to meet the following requirements; provided, however, that if the coverage provided for set forth in this First Supplement is not available at commercially reasonable terms, then the parties shall negotiate to replace the terms as set forth in this First Supplement with comparable terms acceptable to the SLRMWD that meet the goals of the SLRMWD as set forth in this First Supplement:

- (i) The SLRMWD, its representatives, consultants, directors, officers, agents, and employees, and volunteers are to be covered as Named Insureds under the policies, including but not limited to, as respects: liability arising out of the activities performed by or on behalf of Gregory Canyon; products and completed operations of Gregory Canyon; and premises owned, leased, or used by Gregory Canyon.
 - (ii) Gregory Canyon's insurance coverage shall be primary insurance as respects: the SLRMWD, its representatives, consultants, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the SLRMWD, its representatives, and their directors, officers, employees, consultants, or volunteers shall be in excess of Gregory Canyon's insurance and shall not contribute to it.
 - (iii) Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the SLRMWD, its representatives, consultants, officers, agents, employees, and volunteers.
 - (iv) Coverage shall state Gregory Canyon's insurance and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (v) The insurance coverage shall contain no special limitations on the scope of protection afforded to the SLRMWD, its officers, officials, employees, agents or volunteers.
- (b) All Coverage: Each insurance policy required by the SLRMWD shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after sixty (60) days prior to written notice by certified mail, return receipt required, has been given to the SLRMWD.

- (c) Proof of Insurance: Gregory Canyon shall, not less than 45 (forty-five) days prior to the initiation of landfill construction, furnish the SLRMWD with original policies and endorsements evidencing coverage required by this section of the Supplement. The policy or policies and related endorsements are to be signed by the person authorized by that insurer to bind coverage on its behalf. SLRMWD must be provided complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- (d) Certificate of Insurance: Gregory Canyon shall, at least thirty (30) days prior to the expiration of any insurance policy required by this Agreement, file a signed and completed "Certificate of Insurance" (listing all policy endorsements and provisions called for by this Agreement) with the SLRMWD stating that such insurance policy has been renewed or extended. Should Gregory Canyon be unable to renew or extend any insurance policy or policies required by this First Supplement, Gregory Canyon shall deliver a letter of credit in the amount of the aggregate limits of the policy or policies that Gregory Canyon was unable to extend or renew. The letter of credit shall be available to fund the matters contemplated in this First Supplement. If such letter of credit is not available to Gregory Canyon, as demonstrated to SLRMWD by Gregory Canyon, Gregory Canyon shall have delivered to SLRMWD such security or other financial instruments having at least equal value to the amount of such letter of credit, such security and financial instruments that meet the goals of the SLRMWD as set forth in this First Supplement, as determined by the SLRMWD in its reasonable discretion.
- (e) Amount: The insurance policy shall be in the sum of at least \$100,000,000 per occurrence in 2004 dollars. Gregory Canyon will furnish the SLRMWD with certificates of insurance annually. The SLRMWD will have the right to require Gregory Canyon to switch carriers if the rating of the insurer declines. This policy of insurance shall be in addition to other financial arrangements required by the RWQCB, the State Water Resources Control Board, and the California Integrated Waste Management Board, and as outlined in the 1996 Agreement.

10. Delay or Termination of Landfill Project.

10.1 Even in the event of a delay of initiation of construction or operation for any reason, or in the event of a voter approval of any land use initiative which, if approved, would change the zoning for the property owned by Gregory Canyon to prohibit the use of the property for landfill purposes, Gregory Canyon will, nevertheless, reimburse the SLRMWD any actual costs incurred by SLRMWD to initiate water service to Gregory Canyon, and for actual costs to modify, supplement and update the 1996 Agreement to allow the SLRMWD to implement the mitigation measures delegated to it by the LEA. Notwithstanding the above, the any transfer of water rights under Section 8 would not become effective until such times as the Parties enter into a water service agreement and Gregory Canyon's water rights are transferred in a form acceptable to SLRMWD.

11. Cooperation Regarding Amendment of JTD and WDRs.

11.1 The Parties recognize that the 1996 Agreement will be amended from time to time, and that this First Supplement is an interim agreement. The parties agree that this First Supplement, and future supplements, will be made a part of the JTD and placed before the LEA or the California Integrated Waste Management Board for their consideration, as appropriate. In addition, the Parties agree to request that this agreement become a part of the WDRs for the project, either directly or through incorporation in the JTD. The parties will cooperate to ensure that this First Supplement becomes an integral part of the Gregory Canyon JTD, as the 1996 Agreement is from time to time amended, modified and/or supplemented, and that the Parties will cooperate with each other in such amendment, modification and/or supplement process.

12. Binding on Successors and Assigns.

12.1 This First Supplement is binding on the successors and assigns of the Parties.

13. Requisite Action. The Parties represent and warrant to each other that they have taken all requisite action to approve, authorize, execute and deliver this First Supplement and that each person executing this First Supplement on their behalf has all requisite power and authority to execute this First Supplement and to bind the Parties to the provision of this First Supplement.

IN WITNESS WHEREOF, the Parties have executed this First Supplement effective as of the day and year first above written.

Dated: June 30, 2004

SAN LUIS REY MUNICIPAL WATER
DISTRICT

By: Victor Alvarado
President, Board of Directors

Dated: June 30, 2004

Attest: Susan McTague
~~Assistant~~ Secretary

Dated: _____

GREGORY CANYON LTD., a California
Limited Liability Company

By: _____
Richard Chase, Project Manager

13. Requisite Action. The Parties represent and warrant to each other that they have taken all requisite action to approve, authorize, execute and deliver this First Supplement and that each person executing this First Supplement on their behalf has all requisite power and authority to execute this First Supplement and to bind the Parties to the provision of this First Supplement.

IN WITNESS WHEREOF, the Parties have executed this First Supplement effective as of the day and year first above written.

Dated: _____

SAN LUIS REY MUNICIPAL WATER
DISTRICT

By: _____
President, Board of Directors

Dated: _____

Attest: _____
Secretary

Dated: 6/30/2004

GREGORY CANYON LTD., a California
Limited Liability Company

By: Richard Chase
Richard Chase, Project Manager

EXHIBIT A

MITIGATION MONITORING MEASURES RELATED TO SLRMWD AGREEMENT

MITIGATION MEASURE NO.	MITIGATION MEASURE	METHOD OF VERIFICATION	TIMING OF VERIFICATION	RESPONSIBLE PARTY
MM 4.3-1a	For the purpose of providing additional environmental assurance to the San Luis Rey Municipal Water District, in addition to the 13 monitoring wells surrounding the landfill, the water quality monitoring shall include at a minimum monitoring of two production wells (downgradient SLRMWD well #34 and upgradient Lucio well #2), upgradient alluvial monitoring well GMW-3, and downgradient alluvial monitoring well GLA-16 located within the project boundary).	Written report by applicant's hydrogeologist	Annually	San Luis Rey Municipal Water District
MM 4.3-1b	If contamination is detected in any monitored well, the landfill operator shall be responsible for treatment and disposal of contaminated water. The landfill operator shall ensure that impacted water is treated to acceptable water quality standards, consistent with existing background water quality as provided in CCR Title 27, Section 20400 (a)(1). Adequate treatment shall be implemented to maintain background levels established by the RWQCB at the time of issuance of the waste discharge requirements.	Field inspection and monitoring by applicant's hydrogeologist	If contamination is detected	Regional Water Quality Control Board and San Luis Rey Municipal Water District
MM 4.3-1c	The Applicant shall provide to the San Luis Rey Municipal Water District simultaneously with the submission to the RWQCB data collected from the groundwater monitoring program and shall provide to the District and its consultants split samples from any groundwater monitoring station upon reasonable notice given before the next regularly scheduled sampling to enable the District to verify the data collected.	Data prepared by applicant's hydrogeologist	Simultaneously with submission to Regional Water Quality Control Board	San Luis Rey Municipal Water District

MITIGATION MEASURE NO.	MITIGATION MEASURE	METHOD OF VERIFICATION	TIMING OF VERIFICATION	RESPONSIBLE PARTY
MM 4.3-1d	Prior to the commencement of Phase I construction project grading, the Applicant shall provide the San Luis Rey Municipal Water District and the other parties to the Mitigation agreement with an irrevocable letter of credit in accordance with Section 9 and Exhibit C of the Mitigation Agreement. The Letter of Credit shall be automatically renewed annually.	Irrevocable letter of credit	Prior to commencement of Phase 1 construction grading	San Luis Rey Municipal Water District and other parties to the agreement ¹
MM 4.3-1e	Prior to commencement of project operation, the Applicant shall establish, maintain, and administer a trust fund or third party custodial account for the benefit of the San Luis Rey Municipal Water District and the other parties to the Mitigation Agreement in accordance with Section 9 and Exhibit C of the Mitigation Agreement.	Verification of establishment of trust fund	Prior to commencement of operation	San Luis Rey Municipal Water District and other parties to the agreement
MM 4.3-1f	As a condition of any water rights appropriation permit that may be granted by the State Water Resources Control Board, the Applicant shall reduce its diversion of water if the amount of groundwater available within the San Luis Rey Municipal Water District based upon water rights as they existed on April 15, 1996 within the boundaries defined in the Mitigation Agreement, is insufficient to meet the reasonable and beneficial needs of the District or any of the landowners within the District.	Written verification of water usage	If groundwater supply is deemed to be insufficient	San Luis Rey Municipal Water District and other parties to the agreement
MM 4.3-1g	The Applicant shall identify and use an alternate water supply for construction and operation of the project if the amount of groundwater available within the San Luis Rey Municipal Water District is insufficient to meet the reasonable and beneficial needs of the District or any of the landowners within the District.	Written verification of alternate supply	If groundwater supply is deemed to be insufficient	San Luis Rey Municipal Water District

¹ The Agreement is between the San Luis Rey Municipal Water District, certain surrounding landowners, and Gregory Canyon, Ltd.

MITIGATION MEASURE NO.	MITIGATION MEASURE	METHOD OF VERIFICATION	TIMING OF VERIFICATION	RESPONSIBLE PARTY
MM 4.3-1h	If the construction, operation, or closure of the landfill causes degradation of the Pala Basin water or quality of foreign water stored in the Pala Basin for use within the Pala Basin so that it cannot be used for domestic uses and for irrigation, the Applicant shall be liable to the San Luis Rey Municipal Water District to the extent of any degradation of the quality of Pala Basin water or the quality of foreign water stored in the Pala Basin caused by the construction, operation or closure of the landfill, including the cost of remediating the degradation of water quality attributable to the construction, operation or closure of the landfill, or if such remediation is not technologically or economically feasible, of providing an alternative water supply pending permanent remediation measures to the extent necessary to meet the reasonable needs for domestic and irrigation uses of the parties who signed the Mitigation Agreement. The applicant's liability with respect to foreign water shall be limited to remediation of a maximum of 17,694 acre-feet. Remediating the water quality of the Pala Basin or providing an alternative water supply, shall be part of the closure plan and part of the cost estimate required by 14 CCR § 17782.	Testing as required by RWQCB after consultation with SLRMWD	Reporting as required by RWQCB or SLRMWD Agreement	Regional Water Quality Control Board; San Luis Rey Municipal Water District
MM 4.3-1i	The Applicant shall notify the San Luis Rey Municipal Water District and each of the parties to the Mitigation Agreement of any request to modify or to be released from the requirements of the closure plan or the post closure maintenance plan for the project.	Copy of request	At time of request	San Luis Rey Municipal Water District and other parties to SLRMWD Agreement
MM 4.3-1j	The Applicant shall consult with the San Luis Rey Municipal Water District concerning the number, specifications, location, and frequency of data collection at the monitoring stations. The final decision regarding the need for and adequacy of the number, specifications, location of and frequency of data collection from the monitoring stations will be made by the RWQCB.	Discussion with SLRMWD	During discussions of monitoring with RWQCB	Regional Water Quality Control Board; San Luis Rey Municipal Water District